

FIRST APPEALS NO.7026/95 TO 7046/95

with

CROSS APPEALS NO.6320/95 TO 6340/95

Date of decision: 23rd July 1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya sd/-

The Hon'ble Mr.Justice A.R.Dave sd/-

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case invo..

substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Mr.M.R.Anand, G.P. with Mr.A.J.Desai, A.G.P. for the respondents 1 & 2 and for respondent no.3 Mr.D.U.Shah, L.A. in Appeals No.7026 of 1995 to 7046 of 1995 and in Appeals No.6320 of 1995 to 6340 of 1995 Mr.M.R.Anand with Mr.A.J.Desai, for the appellants and Mr.D.U.Shah, L.A. for respondent no.2 and Mr.S.D.Patel for rest respondent no.1.

Coram: N.J.Pandya & A.R.Dave,JJ.

July 23, 1996

These appeals and cross appeals arose out of a judgement given in a group of Reference Cases by the learned Second Extra Assistant Judge, Baroda on 31st March 1994. The learned Judge was dealing with Land Reference Cases No.61 of 1985 to 81 of 1985 treating Land Reference Case No.76 of 1985 to be the main Reference.

2. Section 4 Notification came to be issued on 4-11-1970. The purpose of acquisition was to establish Industrial Estate for GIDC. The award came to be given in the year 1984 by the Land Acquisition Officer, whereunder the market price fixed was Rs.3.10 per square metre.

3. The learned trial Judge while dealing with the Reference cases has placed reliance on sale instances for granting additional compensation to the extent of Rs.11.90. The Court accepted the referene and held that the market price should be Rs.15 per square metre and compensation be awarded on that basis.

4. The State has filed the aforesaid appeals being aggrieved by the decision of the Reference Court and the original claimants have filed cross appeals as they felt that the amount awarded is much low. The claim was that atleast Rs.5/- per square feet should be awarded, when converted into square metre it roughly works out to Rs.50/-. Indeed, there is a wide gap between the two.

5. As stated earlier, to come to the aforesaid conclusion, the learned Judge has relied upon the sale instances at Exhs.10,11 & 12. The judgment of the Reference Court running into almost 50 typewritten pages centres around the discussion of those documents indifferently and the conclusion is to be found in para 39 while answering issue no.3.

6. Learned Government Pleader Mr.Anand is right in pointing out from paragraphs 26 onwards of the judgment that, on the one hand those very instances relied on by the claimants are held by the learned Judge to be not acceptable but on the other, relying on that very instances, additional compensation is granted. But this seems to be the position only upto para 34 of the Judgment. From para 35 onwards particularly in para 38, we find the learned Judge coming to the aforesaid conclusion as recorded in para 39.

7. The documents Exhs.10,11 & 12 are of the period 1969 to 1972. Originally, Notification under Sec.4 was issued in the year 1970 and later on, fresh Notification came to be issued on 1-4-1971. The aforesaid documents are therefore, of the period proximate in point of time except Exh.12 which is of the year 1967. On behalf of the claimants Gopalbhai (Exh.9) has been examined and he refers to all the 3 exhibits in his deposition. No doubt, as rightly noted by the learned trial Judge, the lands covered by those documents are not physically proximate to the lands in question but they seem to be within the radius of 2 to 3 kms.

8. Against those documents, so far as the State is concerned, in the trial Court reliance was placed on Exh.26 executed on 20th February 1988. The price was Rs.1.70 per square foot and it was a document executed in favour of that very witness Gopalbhai (Exh.9), who represents virtually all the claimants.

9. the claimants have tried to come out of this document Exh.26 pointing out that it was relatively speaking, a small piece of land and looking to its situation, Gopalbhai could have been the only purchaser of the land because it is not only proximate abutting to his land, but virtually it is a part of his land and there is no other way possible as an access to it except the land belonging to Gopalbhai. The attempt on behalf of the claimants seems to be to make out a case of the owner of the land sold under Exh.26 being left with no alternative but to sell it to Gopalbhai. In other words, according to the claimants, it cannot be a comparable sale instance as its price is governed by the aforesaid peculiar circumstance. As against that, a large piece of land under Exhs.10 to 12 were sold. Exh.10 discloses the rate of Rs.4.30 per square feet, the transaction date being 28-5-1972, Exh.12 discloses Rs.4.25 per square feet for transaction dated 13-3-1967 and Exh.11 disclosed Rs.3.66 per square feet, the transaction date being 26-5-1969.

10. Once the aforesaid square feet prices are converted into square metre, after multiplying them by 10, obviously, the price range would be Rs.36/- to Rs.47/-per square metre. That is precisely the reason why the learned trial Judge felt that the price disclosed by these documents are much too on higher side. This had prompted Mr.Anand to submit that if the prices were found to be not acceptable, no reliance, thereafter, could have been placed on these documents for coming to the aforesaid conclusion of fixing the market price at

Rs.15/- per square metre. Mr.Anand is right because that is exactly the position to be found from para 35 onwards of the judgment.

11. Two extremes are thus to be found on record when Exhs.10 to 12 are placed on one side and Exh.26 is placed on the other. From almost Rs.17/- per square metre to Rs.46/- per square metre is the price range between the year 1968 Exh.26 to 1972 Exh.10. As noted by the learned Judge, however, in spite of the said instance of Exh.26 being before the Land Acquisition Officer, which works out the square feet price for the year 1968 to be Rs.1.70, higher price has been fixed by him. This being the position, obviously Exh.26 cannot now be made a base for working out the market price.

12. Therefore, so far as the appellant-State is concerned, it is left with no other evidence of its own and therefore, has to attack the infirmity, if any to be found in the evidences led on behalf of the appellants.

13. As noted above, for the claimants sale deeds Exhs.10 to 12 are the only material. The learned trial Judge therefore, seems to have struck a balance between the prices thus disclosed by these documents and also the fact that those documents reveal transactions peculiar in nature because they are shown to have been sold as agricultural land and prices are fixed per square foot because the persons whom they sold, were eventually made over to the land to a Co-operative Society which is to build residential houses on it. The attempt therefore, seems to be to work out a formula whereby price for agricultural land can be obtained.

14. Looking to the fact that the land in question, by the time the award came to be given, came to be covered within the City of Baroda and therefore, till the lands were tilled and actually used for agricultural purposes, it was meant for that use, but for all practical purposes, it has become an urban land having its own potential. In this background, when the learned Judge has fixed the price at Rs.15/- per square metre, we do not see any reason to interfere with the same. Hence, the appeals filed by the State fail.

15. Obviously, therefore, the attempt by way of cross on the part of the claimants to get higher compensation to the extent of Rs.50/- does not find any basis whatsoever. The net result, therefore, is that the appeals filed by the State as well as by the claimants both will fail. They are dismissed with no order as to

costs. No orders on Civil Applications.
